

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

CANAL INSURANCE COMPANY,

Plaintiff,

v.

No. _____

Judge: _____

Jury Demanded

**EAGLE WORLDWIDE
TRANSPORTATION, LLC,**

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

Comes now Plaintiff, Canal Insurance Company, and for its Complaint against Defendant Eagle Worldwide Transportation, LLC, would state and show as follows:

1. Plaintiff Canal Insurance Company (“Canal”) is a South Carolina corporation with its principal place of business located in Greenville, South Carolina, and is duly qualified to do business in Tennessee.

2. Defendant Eagle Worldwide Transportation, LLC is a Tennessee limited liability company with its principal place of business located at 104 Notting Creek Cove, Eads, Tennessee, 38028-8008 and may be served there through its registered agent, Mike Kattawar, Jr. Upon information and belief, all members of the LLC are residents and citizens of Shelby County, Tennessee.

3. Plaintiff brings this action for declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202. This Court has jurisdiction to hear this cause pursuant to 28 U.S.C. §

1332 as it is between citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interests and costs.

4. This Court is the proper venue for this action pursuant to 28 U.S.C. § 1391 because it is the district in which the subject policy of insurance was issued and in which Defendant has its principal place of business.

5. Plaintiff Canal issued a policy of insurance, policy number PIA06836602 (copy attached as **Exhibit A**), to Express America Trucking, Inc. with effective dates of September 1, 2012 through March 2, 2013.

6. Upon information and belief, on or about September 24, 2012, a vehicle was being operated by Javits Perry on behalf of Express America Trucking, Inc. in Lee County, Mississippi.

7. At that same time, James Brown was a passenger in a separate vehicle when it was involved in a motor vehicle accident with the vehicle operated by Javits Perry.

8. On or about July 9, 2014, James Brown filed a lawsuit against Javits Perry and Eagle Worldwide Transportation, Inc. in the Circuit Court of Lee County, Mississippi, seeking among other things punitive damages.

9. On or about May 11, 2015, James Brown filed a Second Amended Complaint against Eagle Worldwide Transportation, LLC, Express America Trucking, Inc., Frankie E. Garrison and Javits Perry seeking damages including punitive damages. (Copy attached as **Exhibit B**).

10. By Order dated May 25, 2017, the Circuit Court of Lee County, Mississippi dismissed Express America Trucking, Inc. and Javits Perry as defendants in that litigation. (Copy attached hereto as **Exhibit C**).

11. Plaintiff is currently providing a defense for Defendant Eagle Worldwide Transportation, LLC under full reservation of rights in the continuing litigation in the Circuit Court of Lee County, Mississippi.

12. Plaintiff contends and asserts that Defendant Eagle Worldwide Transportation, LLC was not an insured under the above-referenced policy at the time of the accident at issue in the underlying litigation and, therefore, is not owed a defense. Therefore, an actual and justiciable controversy exists between the parties.

13. Plaintiff Canal's Policy states in part:

PUNITIVE DAMAGES EXCLUSION

This endorsement modifies insurance provided under the following:
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by the above Coverage Forms, the provisions of the Coverage Forms apply unless modified by this endorsement.

The policy to which this endorsement is attached is amended by adding the following Exclusion:

This policy does not insure against or provide indemnity for fines, penalties, exemplary or punitive damages or any other type or kind of judgment or award which does not compensate the party benefiting from the award or judgment for any actual "loss" or damage sustained.

This exclusion applies regardless of whether the damages are based upon the "insured's" conduct or the conduct of some other party for whom the "insured" may be legally responsible.

If the exclusion of punitive or exemplary damages is not permitted by the law of the states in which a claim for punitive or exemplary damages is brought, then this exclusion shall limit those damages to the extent

permitted by law. In no event shall the total of compensatory and punitive or exemplary damages be payable in excess of the Limit of Insurance provided herein.

This exclusion applies to all coverages under this policy.

...

MOTOR CARRIER ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 9/1/2012
Named Insured: Express America Trucking, Inc.

...

For any operations you engage in as a “motor carrier” the policy is changed as follows:

A. Who Is An Insured under Liability Coverage is replaced by the following:

1. Who Is An Insured

The following are “insureds”:

- a.** You for any covered “auto”

...

C. The Definitions Section is Amended as Follows:

As used in this endorsement:

...

- 3.** “Motor carrier” means a person or organization providing transportation by “auto” in the furtherance of a commercial enterprise.

...

SECTION II – LIABILITY COVERAGE

A. Coverage

We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of a covered “auto”.

...

We have the right and duty to defend any “insured” against a “suit” asking for such damages or a “covered pollution cost or expense”. However, we have not duty to defend any “insured” against a “suit”

seeking damages for “bodily injury” or “property damage” or a “covered pollution cost or expense” to which this insurance does not apply....

...

SECTION V – DEFINITIONS

...

G. “Insured” means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or “suit” is brought.

14. Plaintiff contends and asserts that Defendant Eagle Worldwide Transportation, LLC is not entitled to a defense or indemnity under the policy of insurance at issue as it was not an insured at any point during the effective dates of the policy.

15. Plaintiff contends and asserts that no coverage exists for any punitive or exemplary damages that may be awarded in the underlying action against Defendant Eagle Worldwide Transportation, LLC.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays:

1. That process issue and be served upon the Defendant requiring them to answer this Complaint for Declaratory Judgment;
2. For a trial by jury;
3. For a declaration of rights, obligations, and legal relations of the Plaintiff and Defendant by reason of the aforesaid policy of insurance;
4. For a declaration that Plaintiff is not obligated to furnish legal counsel or otherwise provide a defense on behalf of Defendant Eagle Worldwide Transportation, LLC in the action filed by James Brown pending in the Circuit Court of Lee County, Mississippi docket number CV 14-074(PF)(L);

5. For a declaration that Plaintiff is not obligated to indemnify Defendant Eagle Worldwide Transportation, LLC, pursuant to the terms of the policy of insurance at issue, in the action filed by James Brown pending in the Circuit Court of Lee County, Mississippi docket number CV 14-074(PF)(L);

6. For the costs of this cause; and

7. For such other relief to which Plaintiff may be entitled under the facts and circumstances of this cause.

Respectfully submitted,

RAINEY, KIZER, REVIERE & BELL, P.L.C.

By: s/ Bradford D. Box

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